

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES GUERRERO,
Petitioner,

v.

PEOPLE OF CALIFORNIA,
Respondent.

Case No. 22-cv-06088 BLF (PR)

**ORDER DENYING MOTION TO
DISMISS; GRANTING REQUEST
FOR STAY; ADMINISTRATIVELY
CLOSING CASE**

(Docket No. 13)

Petitioner, proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state sentence out of Santa Clara County. Dkt. No. 1. The Court found the petition stated cognizable claims and ordered Respondent to show cause why the writ should not be granted. Dkt. No. 10.

Respondent filed a motion to dismiss based on *Younger*¹ abstention. Dkt. No. 13. Petitioner filed an opposition, Dkt. No. 14, and Respondent filed a reply, Dkt. No. 15.

I. BACKGROUND

Petitioner was found guilty by a jury in Santa Clara County Superior Court of first

¹ *Younger v. Harris*, 401 U.S. 37 (1971).

1 degree murder (Cal. Pen. Code § 187) and active participation in a criminal street gang
 2 (Cal. Pen. Code § 186.22(a)). Dkt. No. 1 at 1; Dkt. No. 13 at 2, citing *People v. Guerrero*,
 3 2021 WL 3673855, at *1 (Cal. Ct. App. 2021) (Case No. 215585). The jury also found
 4 true allegations that Petitioner and his brother committed the murder for the benefit of a
 5 criminal street gang, and that a principal personally and intentionally discharged a firearm
 6 and proximately caused death (Cal. Pen. Code § 12022.53(d) & (e)(1)). *Id.* Petitioner and
 7 his brother were each sentenced on March 23, 2018, to 53 years to life in state prison. *Id.*

8 On direct appeal, the California Court of Appeal ordered that the three-year terms
 9 imposed on count 2 be stayed, but otherwise affirmed the judgments. *People v. Guerrero*,
 10 2021 WL 3673855, at *1. On November 17, 2021, the California Supreme Court denied
 11 petitions for review. Ex. 1², Dkt. No. 13 at 8.

12 On January 1, 2022, amendments to California Penal Code sections 186.22(b) (gang
 13 enhancement statute) and 1170 (determinate sentencing statute) became effective. Dkt.
 14 No. 13 at 2, citing Assembly Bill No. 333 (AB 333), 2021-2022 Reg. Sess., Stats. 2021,
 15 ch. 699; Senate Bill No. 567 (SB 567), 2021-2022 Reg. Sess., Stats. 2021, ch. 731.

16 On January 13, 2022, Petitioner filed a counseled petition for writ of habeas corpus
 17 in superior court,³ alleging that he is entitled to relief under AB 333 and SB 567 because
 18 his judgment was not final, as the time for filing a petition for writ of certiorari had not yet
 19 expired.⁴ Ex. 2 at 10, Dkt. No. 13 at 19. On March 9, 2022, the superior court requested
 20 an informal response from the District Attorney's Office. Ex. 3, Dkt. No. 13 at 147.

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 22 ² All references to exhibits are to the exhibits filed with Respondent's motion to dismiss,
 unless otherwise indicated. Dkt. No. 13.

23 ³ Respondent concedes that because Petitioner filed his state habeas petition before his
 24 state judgment became final, the statute of limitations for filing his federal habeas petition
 has not yet begun to run. Dkt. No. 13 at 2, fn. 3, citing 28 U.S.C. § 2244(d)(2).

25 ⁴ Per Respondent, a judgment becomes final 90 days after the denial of a petition for
 26 review when the time to file a petition for writ of certiorari has expired. Dkt. No. 13 at 2,
 27 fn. 4, citing *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009). In this case, the 90 days
 28 would have expired on February 15, 2022, about a month after Petitioner filed his state
 habeas petition. *Id.* Additionally, the superior court did not issue an abstract of judgment
 reflecting the court of appeal's modification to the sentence until February 14, 2022, which
 was also about a month after the filing of Petitioner's state habeas petition. *Id.*, Ex. 6.

On October 6, 2022,⁵ Petitioner filed the instant habeas action in *pro se*. Dkt. No. 1. On March 28, 20223, the Court issued an Order to Show Cause, finding the petition raised six cognizable claims. Dkt. No. 10 at 2.

On April 14, 2023, the District Attorney's Office moved for a stay in the superior court habeas case until the California Supreme Court resolved conflicting appellate decisions on AB 333. Ex. 4. On April 17, 2023, the state court granted the stay. Ex. 5.

II. DISCUSSION

A. Motion to Dismiss

Under principles of comity and federalism, a federal court should not interfere with ongoing state criminal proceedings by granting injunctive or declaratory relief absent extraordinary circumstances. *See Younger v. Harris*, 401 U.S. 37, 43–54 (1971). *Younger* abstention is required when (1) state proceedings, judicial in nature, are pending; (2) the state proceedings involve important state interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). A fourth requirement has also been articulated by the Ninth Circuit: that “the federal court action would enjoin the state proceeding or have the practical effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves.” *SJSVCCPAC v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008) (citing cases).

The state proceedings must be pending, not merely available, and plaintiffs must be seeking relief that would interfere in some manner with the state court litigation. *See Green v. City of Tucson*, 255 F.3d 1086, 1094 (9th Cir. 2001). The rationale of *Younger* applies throughout appellate proceedings, requiring that state appellate review of a state court judgment be exhausted before federal court intervention is permitted, *see Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607-11 (1975); *Dubinka v. Judges of the Superior Court*, 23

⁵ For purposes of this motion and under the mailbox rule, Respondent assumes that Petitioner delivered his petition to prison officials on the same date he signed it. Dkt. No. 13 at 3, fn. 5, citing *Anthony v. Cambra*, 236 F.3d 568, 575 (9th Cir. 2000).

1 F.3d 218, 223 (9th Cir. 1994) (even if criminal trials were completed at time of abstention
2 decision, state court proceedings still considered pending). In order to avoid *Younger*, the
3 federal plaintiffs must show that they are procedurally barred from raising the federal
4 claims in the state action. See *Gilbertson v. Albright*, 381 F.3d 965, 979-80 (9th Cir. 2004)
5 (en banc) (citing *Moore v. Sims*, 442 U.S. 415 (1979)); see also *Lebbos v. Judges of*
6 *Superior Court*, 883 F.2d 810, 815 (9th Cir. 1989).

7 Respondent asserts that *Younger* abstention applies to this case. Dkt. No. 13 at 4.
8 The judgment Petitioner challenges is final insofar as direct review is complete and the
9 superior court has issued an amended abstract of judgment. *Id.* However, Respondent
10 asserts that Petitioner filed his currently stayed state habeas petition challenging the same
11 judgment before it was final, specifically so that he could take advantage of recently
12 enacted statutes. *Id.*, Ex. 2 at 10, 18, 22, 43-44 (citing *In re Estrada*, 63 Cal.2d 740, 745
13 (1965), which holds that in the absence of express legislative intent to the contrary, a new
14 ameliorative statute applies to cases that are not yet final at the time of its enactment).
15 Respondent asserts that since there is an ongoing state proceeding in state court
16 challenging the same judgment petitioner challenges in the present federal petition, the
17 first *Younger* requirement is satisfied. *Id.*

18 Respondent also asserts that with respect to the second *Younger* element,
19 Petitioner's state proceeding implicates important state interests, i.e., whether and how to
20 apply its ameliorative statutes to Petitioner's case. Dkt. No. 13 at 4. Respondent asserts
21 that application of these newly-enacted statutes in Petitioner's case will potentially result
22 in a new judgment, and that state criminal proceedings clearly implicate important state
23 interests. *Id.* With regard to the third element, Respondent asserts that Petitioner will have
24 an adequate opportunity to raise any constitutional claims in the California Court of
25 Appeal and the California Supreme Court after the superior court rules on his habeas
26 petition, and that the state courts have primary responsibility to protect constitutional rights
27 on his habeas petition. *Id.* at 5. Fourthly, Respondent asserts that the requested relief has
28 the practical effect of enjoining the state proceeding. *Id.* Petitioner seeks to overturn his
state judgment in the present federal petition, which would necessarily interfere with the

1 state court's decision of whether to apply the ameliorative statutes to his judgment. *Id.*
2 Lastly, Respondent asserts that there is no bad faith, harassment, or "extraordinary
3 circumstance" to render *Younger* abstention inappropriate. *Id.*

4 In opposition, Petitioner asserts that he has satisfied the exhaustion requirement by
5 raising his claims throughout the entire direct appellate process of the state. Dkt. No. 14 at
6 1. Petitioner asserts that the ongoing state proceedings only addresses the "enhancements"
7 and will not decide the merits of his constitutional challenges nor will result in the
8 overturning of his murder conviction and related 25 years to life sentence. *Id.* at 2-3.
9 Petitioner also asserts that granting the dismissal will result in further delay to obtaining
10 relief. *Id.* at 3. Furthermore, Petitioner asserts that if this matter were dismissed, he runs
11 the risk of having a subsequent habeas action challenged as "second or successive." *Id.*
12 Lastly, he asserts that he may run afoul of AEDPA's statute of limitations. *Id.* at 4.
13 Petitioner requests the Court stay and abey this matter rather than outright dismissal. *Id.*

14 In reply, Respondent asserts that while Petitioner's state petition may not concern
15 the same constitutional claims as in this action, his state petition does assert constitutional
16 claims relating to the same conviction and enhancement which Petitioner challenges
17 herein, i.e., the gang conviction and gang enhancement. Dkt. No. 15 at 2. Therefore,
18 Respondent asserts, if this federal action were to proceed, it would have the practical effect
19 of enjoining the ongoing state action. *Id.* Respondent also asserts that dismissal rather
20 than a stay is required if the *Younger* factors are met, and distinguishes this matter from
21 *Duke v. Gastelo*, 64 F.4th 1088 (9th Cir. 2023), wherein a stay was granted based on the
22 specific facts before the court. *Id.* As for timeliness concerns, Respondent points out that
23 Petitioner's timely filed state habeas petitions qualify for statutory tolling so long as he
24 does not unreasonably delay between filings. *Id.* at 3.

25 After reviewing the papers, the Court finds that a stay is appropriate under *Duke*
26 rather than outright dismissal because not all the *Younger* elements are present. As to the
27 first *Younger* element, there is no dispute that there is an ongoing state proceeding in state
28 court challenging the same judgment Petitioner challenges in this action. As to the second
Younger element, the Supreme Court has held that "a proper respect for state functions,"

1 such as a pending decision in the state high court regarding a change in law, is an
2 important issue of state interest. *See Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973)
3 (quoting *Younger*, 401 U.S. at 44). Furthermore, the Court agrees that the state has an
4 important interest in how its ameliorative statutes apply to Petitioner’s case, and other
5 similarly situated state prisoners.

6 However, it is the third prong of *Younger* that is at issue. In *Duke*, the Ninth Circuit
7 found that all the factors for *Younger* abstention were not satisfied because the third part of
8 the test was not met, *i.e.*, the state proceedings afforded the litigant adequate opportunity to
9 raise the constitutional issues. *Duke*, 64 F.4th at 1094. In that matter, the State conceded
10 that the pending resentencing proceedings would not address the prisoner’s federal
11 constitutional claims. Here, Petitioner raises claims which are also at issue in the pending
12 state proceedings on the applicability of AB 333: he challenges the gang enhancement
13 charge, including the jury instructions for “association with any criminal street gang” and
14 the admission of cumulative and prejudicial gang evidence. *See* Dkt. No. 10 at 2; Dkt. No.
15 13 at 31, 46, 48. However, he also raises claims which are not the subject of the pending
16 state proceedings because they challenge the constitutionality of the first-degree murder
17 charge based on the denial of his right to confrontation, ineffective assistance of counsel,
18 and deficient jury instructions. *Id.* at 2. In this regard, Respondent concedes that the
19 pending resentencing proceedings would not address those claims but argues that
20 Petitioner would nevertheless have an opportunity to raise them in the state appellate and
21 high courts after the state superior court rules on his habeas petition. But Respondent
22 ignores the fact that Petitioner appears to have already exhausted those claims on direct
23 appeal, and therefore this third factor does not necessarily weigh in favor of abstention.

24 Lastly, a stay would avoid interfering with the state court’s decision regarding the
25 application of the ameliorative statutes to Petitioner’s judgment, which is the fourth factor
26 to consider for abstention. *See supra* at 3. In applying *Younger*, the Ninth Circuit has held
27 that abstention is only appropriate where the federal court action would have the same
28 practical effect on the state proceeding as a formal injunction. *Gilbertson v. Albright*, 381
F.3d 965, 977–78 (9th Cir. 2004). Here, a stay of this action pending the conclusion of

Petitioner's state habeas action would avoid interfering with the state proceedings in a way that *Younger* disapproves. *See City of San Jose*, 546 F.3d at 1092. Furthermore, a stay would avoid the risks that Petitioner raises regarding timeliness and potential second and successive petition bar. Thus, *Younger* abstention is not applicable here. Accordingly, the motion to dismiss shall be denied, Dkt. No. 13, and the matter shall be stayed pending resolution of Petitioner's state court proceedings.

II. CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Respondent's motion to dismiss the petition under *Younger* is **DENIED**.
Dkt. No. 13.

2. Petitioner's request for a stay is **GRANTED**. This action is hereby **STAYED** pursuant to *Duke*, 64 F.4th 1088.

3. If Petitioner intends to have this Court consider the claims in this matter, he must notify the Court **within twenty-eight (28) days after** state court proceedings related to his counseled habeas petition in the state superior court have concluded, including any subsequent habeas petitions filed in the state appellate and high courts. His notice shall include a motion to reopen this action based on the conclusion of state court proceedings, including the dates of the relevant decisions.

If Petitioner wishes to include any newly exhausted claims from the counseled petition, he must also include a motion to amend and the proposed amended petition that includes all exhausted claims, i.e., the original claims and the newly exhausted ones. On the other hand, if Petitioner received some relief with respect to the gang enhancement such that those related claims are moot, he may move to strike those claims from this action.

4. The Clerk shall **ADMINISTRATIVELY CLOSE** the file pending the stay of this action. This has no legal affect; it is purely a statistical procedure. When Petitioner files his motion to reopen this matter, the case will be administratively re-opened.

United States District Court
Northern District of California

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This order terminates Docket No. 13.

IT IS SO ORDERED.

Dated: October 23, 2023


BETH LABSON FREEMAN
United States District Judge

Order Denying Motion to Dismiss; Staying Case
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